

Newfields Planning Board Meeting Minutes
July 16, 2015

Attendance: Chairman Jeff Feenstra, Mike Price, Mike Todd, Bill Meserve, Alternate Keith Rowe, Alternate Scott Wachsmuth and Attorney Derek Durbin

Absent from the meeting was John Hayden, Town Planner Clay Mitchell, Dave Edgerly and Jamie Thompson.

The meeting was called to order at 7:07pm.

New Road Newfields LLC-James Daley Map 201 Lot 16.3-Site Plan Modification

James Daley presented his plan to add two storage buildings to his lot 16.3. The buildings will be 30' x 90' and 30' x 175' and located at the back of the site. This is a new use of this site to expand the existing storage facilities on nearby sites. The meeting was publicly noticed and Mr. Daley would like approval tonight.

A motion was made by Mike Todd and seconded by Bill Meserve to accept jurisdiction of the plan. All were in favor and the motion carried.

Lighting was discussed. Any security lighting will be shielded to prevent glare off site. The buildings will be within the site boundaries.

A motion was made by Mike Todd and seconded by Bill Meserve to approve the plan. All were in favor and the motion carried.

Vernon Family Farm-301 Piscassic Rd-Site Plan Review - Map 211 Lot 14

Alternate Board Member Scott Wachsmuth recused himself and Alternate Keith Rowe became a voting member of the Board.

Attorney Amy Manzelli presented the Vernon Family Farm plan on behalf of Jeremiah Vernon. The plan is the same as last month with the exception of the dimensions of the 6,324 sq. foot parking area that has been added as requested by the Board.

Attorney Manzelli suggested that Chairman Feenstra recuse himself from the Board due to the fact that he may have a conflict of interest. Although, she has no doubt there is no conflict; doing so would eliminate the issue brought up by abutter Scott Wachsmuth through his attorney. Chairman Feenstra agreed and stepped down.

There were a total of four members present which represented a quorum.

It was Attorney Manzelli's understanding that the Board would review the dimensions of the parking area only and not restate information discussed last month. Her letter dated July 16, 2015 summarizes the applicant's position.

Attorney Manzelli mentioned that State Law supports agriculture and this is a permitted use for a property in the residential/agricultural zone. She respectfully requests approval this evening. She said nothing has changed on the plan and she would like discussion to be limited to the new information that is being brought forward.

At 7:20pm Mike Todd requested that the Board take a 15 minute recess for the purpose of reviewing the two letters submitted from Attorney Manzelli and Attorney Richardson both dated July 16, 2015.

The Board reconvened at 7:35pm.

Attorney Manzelli stated that under RSA 21:34-a the farm store is an agricultural use whether you call the building a farm store or a farm stand. It is a retail operation that sells more than 35% dollar volume from the products that are produced on the farm and qualifies as a farm stand. The farm stand will meet the 35% requirement.

Attorney Manzelli commented on the letter submitted by Attorney Richardson dated July 16, 2015. In her opinion, the statement, "Farm Roadside Stands under RSA 21:34-a, III, is a limited exemption for retail uses that are not contained in permanent buildings or structures, and therefore exempt from the Zoning Ordinance "cannot be supported by law and is not the case.

Attorney Manzelli added that the following is not an accurate statement of the law: "Paragraph III provides an exemption for a Farm Roadside Stand. However, this exemption does not apply to buildings and structures which are governed by Paragraph II. A "Farm Roadside Stand" governed by Paragraph III is not a building or structure that is fixed to the ground and therefore subject to local zoning. It is temporary and does not involve electricity, refrigeration, or year round operations."

Attorney Manzelli stated there is no law that supports that a farm roadside stand cannot have electricity, refrigeration, a foundation or be used year round.

Mr. Vernon spoke about his gravel parking area. There will be 10 parking spaces including a handicap space. There is an area for tractor trailer trucks to enter and adequate space for deliveries.

Mr. Vernon mentioned that the Wachsmuth's house is not directly across the street from the proposed access for the farm stand, as previously mentioned. He showed the Board a "Google Earth" photo of the site to confirm his statement.

Mike Todd asked for clarification on the driveways. Driveways labeled as "a" and "b" will be eliminated. Mr. Vernon confirmed that the existing paved driveways will no longer be used. The pavement in the right of way will be removed per the DOT permit. The driveway labeled "c" will be the permanent driveway for both the farm and the home.

Mike Todd also asked about the drainage of the parking area. Jeremiah said the drain labeled "g" on the plan is for surface water and will drain out to daylight.

According to Mr. Vernon the tractor trailer area will be a continuation of the gravel parking lot.

Bill Meserve felt the headlight issue brought up by abutter Mr. Wachsmuth was a non-issue because the access was not directly across from the Wachsmuth property.

Attorney Richardson had a number of comments to make. In his opinion, it is up to the individual board member as to whether or not recusal from the Board is appropriate. He stated that Board member Bill Meserve has an approved vineyard that involves retail sales to customers. He would like the Board to consider the recusal of Board member Bill Meserve because of prejudice.

In Attorney Richardson's opinion, any retail sales in the building at Vernon Family Farm are prohibited unless it is in a zone where retail sales are allowed. Retail sales are not allowed in the R/A zone.

Attorney Durbin mentioned that he has no real background with regard to Mr. Meserve's vineyard. He encouraged the Board to discuss whether or not they felt there was a potential conflict. Mr. Meserve has a permitted vineyard with a retail component. It is Attorney Richardson's opinion that the outcome of tonight's decision on the Vernon Family Farm may affect Mr. Meserve and render his land as a non-conforming use. Attorney Durbin does not see how that would affect Mr. Meserve's decision making.

Mike Todd clarified that it was Attorney Richardson's opinion that tonight's decision may somehow render Meserve's vineyard a non-conforming use. Mike Todd did not feel the two issues were related.

Attorney Richardson added that the outcome tonight will affect any changes if Mr. Meserve comes back to the Board to expand or alter the vineyard.

Bill Meserve said he does not intend to recuse himself and the Board had no issue with him remaining as a voting member.

Mike Todd stated that in the past, the Board has approved a "Roadside Farm Stand" with electricity in the Residential/Agricultural zone. It was done years ago and was prior to the approval of Mr. Meserve's site plan. The existing definitions today are much broader than before.

Mr. Wachsmuth commented that this roadside stand is a retail operation as his Attorney explained in his letter dated June 18, 2015 and submitted at last month's meeting

Mike Todd stated that regardless of what you want to call the building, a farm store or a farm stand, the use remains an agricultural operation because at least 35 percent of the products are produced on the farm.

Attorney Durbin commented on the definition of farm stand and farm store. In his opinion, these words are used interchangeably with no legal distinction.

The Vernon Family Farm use does fall within the definition of farming and farm roadside stand by state statute and the town ordinances and is permitted in the R/A district. The Board has determined and is well aware that the structure is a farm roadside stand and the farm will meet the 35% threshold criteria as stated in RSA 21:34-a.

Resident Ray Buxton commented on what a fantastic job the Vernon's have done with the farm. It is beautiful and he would like to see them be allowed to move forward.

James Daley commented on how he grew up on a farm down the street from the Vernon's. There were farm stands in front of every single house back in the day. Farming has been a way of life for years and years.

Attorney Richardson requested that the board look at RSA 21:34-a and the definition of farm with relevant sections highlighted.

RSA 21:34-a I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in the operations named in paragraph II of this section.

Attorney Richardson said paragraph I above refers to buildings and structures that may be used for farming activities such as the care of livestock. Other structures used in operations are named in paragraph II. Paragraph II of RSA 21:34-a, allows retail uses only where permitted by local regulations.

Paragraph II, Section (5) **The marketing or selling at wholesale or retail, on-site and off-site, where permitted by local regulations, any products from the farm.**

Paragraph III of RSA 21:34-a A farm roadside stand shall remain an agricultural operation and not considered commercial, provided that at least 35% of the product sales is attributable to products produced on the farm or farms of the stand owner.

Attorney Richardson feels that Paragraph III would have referred to a "farm store" if it was intended to be the same as a "farm stand".

Attorney Manzelli said there is nothing in the law to prohibit against electricity, a foundation and permanent year round use.

Attorney Richardson said there is no doubt that retail is prohibited as an accessory use and primary use in the R/A district. If the farms stand is a building permitted by local regulations; the most that can be done is grant an approval on the condition of a variance. A farm stand is not a building in Attorney Richardson's opinion.

Mike Todd disagrees and would like to know how a farm stand cannot be a structure or a building? The definition of farm stand does not specify whether or not electricity, a foundation or year round use is allowed.

Attorney Richardson said if the farm stand is a building it is governed by law. If it is a farm stand it is governed by local zoning. He added that the significance of the Administrative Decision issued by the Town is that the "farm store" will be subject to building codes. The key issue is the "farm stand" is a building.

Attorney Durbin reiterated that the law does not specify between any of the terms; farm stand, building, structure, etc. It is left up to interpretation and it is irrelevant what the building, or structure, or farm stand or farm store is called so long as the purpose is a farm stand.

Attorney Manzelli commented that there are six instances where selling and sales is mentioned in the first section of RSA 21:34-a.

Attorney Richardson commented on the Newfields Site Plan criteria 10.6.1 which requires appropriate buffers.

Bill Meserve questioned where lights would be shining on the abutters.

Attorney Richardson explained that all access to the barns is moving over to the parking lot location. There are 10 parking spaces which mean there could be 50 people but they expecting 5 customers per day. Vernon's are creating a commercial use and the Wachsmuth property is right along the road. Attorney Richardson would like to see the Board approve access on the opposite side of the shed.

Mike Price was under the impression that the DOT determined the safest location for the driveway access to the site. Perhaps Mr. Wachsmuth should have discussed the headlight issue with the DOT.

Mr. Wachsmuth replied that he did contact DOT and was told the access could have been placed further down the road to the west. Mr. Wachsmuth would like to see buffers put in to prevent lights going into his grandson's bedroom. He is not against farming; he just wants it to be manageable.

Mike Todd emphasized to Mr. Vernon the importance of completing the parking as depicted on his plan. Mike Price added that when the parking lot has been completed there will be no parking in front of the store. The purpose of this meeting is to define where the parking will be located and if someone isn't parking in the designated spots enforcement would be needed.

Mr. Vernon explained that the parking is defined by a stone wall and fences on all sides except for the tractor trailer pull in area.

Attorney Richardson continued with his client's concerns regarding traffic going in and out of the site. If it was just one vehicle it would be fine. This is going to be a large active farm with commercial deliveries, traffic and chickens going to slaughter in this quiet rural area. Attorney Richardson requested that the driveway be relocated.

Mr. Wachsmuth would like to see buffers as required in the site plan regulations.

Mike Todd said if the cars are not allowed to park anywhere but in the parking lot buffers will not be needed. He stressed again that Mr. Vernon construct the parking area exactly as shown on his plan.

As a condition of approval the parking area should be built before opening so there are no issues for the neighbor. Hours of operation will be 8-6 daily year round.

Mike Price asked about whether Mr. Vernon had any control over deliveries. Mr. Vernon replied that the deliveries are coordinated with other farms in the area and would most likely occur during the hours of operation. He does not anticipate trucks idling for any length of time. Deliveries usually take less than 30 minutes. There will be no refrigerated deliveries; most deliveries are grain trucks.

Mike Todd made a motion to approve the site plan with the following conditions:

1. The access drive shall be constructed and parking area completed (including drainage) prior to the opening of the farm store.
2. A review of the designated parking and lights shall be conducted one year from the opening of the farm store. The necessity for buffers will be discussed at that time.
3. The condition on the decision letter regarding inspections by building inspector Larry Shaw.

The motion was seconded by Keith Rowe and the plan was accepted with the conditions noted above.

Attorney Richardson would like the applicant to consider moving the driveway access to the opposite side of the shed.

Attorney Manzelli concurred with the request.

Without further public hearing, the applicant may relocate the approved driveway further west of its current location providing the DOT approves said re-location.

Proposed Zoning Changes

Kent Lawrence was unable to attend the meeting but he wanted to discuss possible amendments to the regulations and rules regarding in-law apartments.

Currently, an applicant is required to go the ZBA for a special exception for an in-law apartment. When the property is sold the applicant is to remove the kitchen facility. The Board discussed changing the zoning to allow the new owners to keep the in-law apartment providing it is used for its intended purpose. It was not determined if the new owners should be required to go back before the ZBA for a continuance of the use. More discussion will follow when Kent Lawrence is available.

A motion was made by Mike Todd and seconded by Jeff Feenstra to approve the May 2015 minutes as amended. All were in favor and the motion carried.

A motion was made by Bill Meserve and seconded by Jeff Feenstra to approve the June 2015 minutes as amended. All were in favor and the motion carried.

The meeting adjourned at 8:58pm.

Respectfully submitted,

Sue McKinnon